



STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

JOHN CHIANG  
State Controller

RAMON J. HIRSIG  
Executive Director

September 5, 2008

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the September 16, 2008 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1705, *Relief from Liability*.

Action 1 on the Agenda concerns whether Regulation 1705 should be revised to clarify when a franchisee is relieved from the liability to pay tax based on erroneous advice provided to its franchisor.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m. on September 16, 2008** in Room 121 at the address shown above.

Sincerely,

Randie L. Henry, Deputy Director  
Sales and Use Tax Department

RLH:llw

Enclosures

cc: (all with enclosures)

Honorable Judy Chu, Ph.D., Chair, Fourth District  
Honorable Betty T. Yee, Vice Chairwoman, First District (MIC 71)  
Honorable Bill Leonard, Member, Second District (MIC 78)  
Honorable Michelle Steel, Member, Third District  
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via e-mail)  
Mr. Steve Shea, Board Member's Office, Fourth District (via e-mail)  
Mr. Mark Ibele, Board Member's Office, Fourth District (via e-mail)  
Mr. Alan LoFaso, Board Member's Office, First District (via e-mail)  
Ms. Sabina Crocette, Board Member's Office, First District (via e-mail)  
Mr. Gary Qualset, Board Member's Office, First District (via e-mail)  
Ms. Mengjun He, Board Member's Office, First District (via e-mail)  
Ms. Amber Kemp, Board member's Office, First District (via e-mail)  
Mr. Lee Williams, Board Member's Office, Second District (via e-mail)  
Mr. Ken Maddox, Board Member's Office, Third District (via e-mail)  
Mr. Neil Shah, Board Member's Office, Third District (via e-mail)  
Ms. Elizabeth Maeng, Board Member's Office, Third District (via e-mail)  
Ms. Christina Rueck, Board Member's Office, Third District (via e-mail)  
Ms. Melanie Darling, State Controller's Office (via e-mail)  
Mr. Ramon J. Hirsig (via e-mail)  
Ms. Kristine Cazadd (via e-mail)  
Ms. Randie L. Henry (via e-mail)  
Mr. Jeff Vest (via e-mail)  
Mr. Robert Lambert (via e-mail)  
Mr. Randy Ferris (via e-mail)  
Mr. David Levine (via e-mail)  
Mr. Tim Treichelt (via e-mail)  
Ms. Christine Bisauta (via e-mail)  
Mr. Robert Tucker (via e-mail)  
Mr. Todd Gilman (via e-mail)  
Ms. Laureen Simpson (via e-mail)  
Mr. Bill Benson (via e-mail)  
Ms. Freda Orendt (via e-mail)  
Mr. Stephen Rudd (via e-mail)  
Mr. Robert Buntjer (via e-mail)  
Mr. Jeff McGuire (via e-mail)  
Mr. James Kuhl (via e-mail)  
Mr. Geoffrey E. Lyle (via e-mail)  
Ms. Leila Hellmuth (via e-mail)  
Ms. Lynn Whitaker (via e-mail)  
Ms. Cecilia Watkins (via e-mail)

## Formal Issue Paper Number 08-008

**Agenda**  
**Page 1 of 3**

# AGENDA — September 16, 2008 Business Taxes Committee Meeting

## Proposed revisions to Regulation 1705, *Relief from Liability*, regarding RTC section 6596 relief to franchisees based on written advice provided to franchisors

<p><b>Action 1 — Proposed revisions to Regulation 1705(e)</b></p>	<p><b>Regulation 1705. RELIEF FROM LIABILITY</b></p> <p><b>(a) IN GENERAL.</b> A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:</p> <ul style="list-style-type: none"> <li>(1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or</li> <li>(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or</li> <li>(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision(c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.</li> </ul> <p>Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.</p> <p>The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.</p> <p><b>(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.</b></p> <ul style="list-style-type: none"> <li>(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.</li> <li>(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person’s use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval: <ul style="list-style-type: none"> <li>(A) The defined population of the purchases that will be included in the reporting method;</li> <li>(B) The percentage of purchases of the defined population that is subject to tax;</li> </ul> </li> </ul>
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**AGENDA — September 16, 2008 Business Taxes Committee Meeting**  
**Proposed revisions to Regulation 1705, *Relief from Liability*, regarding RTC section 6596 relief to franchisees based on written advice provided to franchisors**

	<p>(C) The length of time the writing shall remain in effect;</p> <p>(D) The definition of a significant or material change that will require rescinding the approved reporting method; and</p> <p>(E) Other conditions as required.</p> <p>The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.</p> <p><b>(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.</b> Presentation of the person’s books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered “written advice from the Board” for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person’s transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person’s activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.</p> <p><b>(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.</b> Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:</p> <p style="padding-left: 40px;">(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or</p> <p style="padding-left: 40px;">(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.</p> <p><b>(e) TRADE OR INDUSTRY ASSOCIATIONS <u>OR FRANCHISORS.</u></b> A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. <u>A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.</u></p> <p><u>For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.</u></p>
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Issue Paper Number **08-008**



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

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## **Proposed revisions to Regulation 1705, *Relief from Liability*, regarding RTC section 6596 relief to franchisees based on written advice provided to franchisors**

### **I. Issue**

Should Regulation 1705, *Relief from Liability*, be revised to explain when a franchisee is relieved from the liability to pay tax based on erroneous written advice provided to its franchisor?

### **II. Alternative 1 - Staff Recommendation**

Staff recommends revising Regulation 1705 to clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

Staff's proposed revisions are attached as Exhibits 2.

### **III. Alternative 2 - Other Alternative Considered**

Do not revise Regulation 1705.

## IV. Background

Revenue and Taxation Code section (Section) 6596 provides relief from tax, interest, and penalty charges due on a transaction if the Board determines that the taxpayer failed to pay tax because it reasonably relied on erroneous written advice from the Board. For relief to apply, the Board must have received a written request for advice on the transaction, the request must have identified the taxpayer to whom the advice applied, and the request must have fully described the facts and circumstances of the transaction.

Section 6596 subdivision (d) states that, “[o]nly the person making the written request shall be entitled to rely on the board’s written advice to that person.” Accordingly, taxpayers cannot obtain relief by relying on a written opinion given to another business, even if the transactions are similar. However, a taxpayer may rely on advice given to the taxpayer’s representative provided that the representative identifies the person for whom the advice is requested.

Regulation 1705, *Relief from Liability*, is based upon Section 6596 and explains its provisions in more detail. In 1999, Regulation 1705 was amended to extend Section 6596 relief to trade or industry association members when an association requests written advice on behalf of its members. In order to obtain relief under Section 6596, the members must be identified in the association’s request for advice.

Under discussion is whether Regulation 1705 should be revised to explain that similar relief applies to franchisees and franchisors. This issue was brought up by an interested party at the September 12, 2007, public hearing on the proposed Board of Equalization Rules for Tax Appeals. Staff met with interested parties on May 20, 2008, and July 15, 2008, to discuss the proposed changes. The Business Taxes Committee is scheduled to discuss this topic at the September 16, 2008, Committee meeting.

## V. Discussion

**Written advice provided in response to a franchisor’s written request.** Regulation 1705(b)(1) addresses relief for taxpayers when written advice is requested by the taxpayer’s representative and the taxpayer is specifically identified in the written inquiry. In view of this, staff believes that under the current provisions of Regulation 1705, a franchisee could be relieved of the liability for tax if its franchisor requested written advice and specifically identified the franchisee. To provide clarity in the regulation, however, staff proposes revising subdivision (e) of Regulation 1705 to specifically include franchisors and franchisees. The proposed revisions also explain that in order to qualify for relief, the activity or transactions in question must involve the same facts and circumstances as those presented in the written request for relief from the association or franchisor. (See Exhibit 2.)

There has been some confusion regarding the retroactive effect of the proposed revisions. Since the revisions only clarify the existing provisions of Section 6596, the revisions would apply retroactively if approved by the Board and the Office of Administrative Law. Relief under the regulation would apply as it currently does; relief is based on the day the written advice was given to the taxpayer requesting relief. Thus, franchisees identified in a request can rely on the written response to that request. If subsequent letters are sent identifying new franchisees, those new franchisees would be eligible for relief based on the date of the Board’s subsequent response – the new franchisees would not be given relief back to the date of the Board’s first response. In other words, taxpayers cannot rely on advice *before* it is given to them by the Board. The following example illustrates how relief would apply:

**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

January 2008

A franchisor requests advice in writing asking if a particular labor charge is taxable. The franchisor identifies franchisees #1 - 20 in the request.

March 2008

A Board auditor replies in writing that the labor charge in question is exempt from tax. The auditor sends a copy of the letter to franchisees #1 – 20.

June 2008

The franchisor realizes that franchisee #21 was not included in the January request, even though #21 was operating in January. In addition, new franchises #22 - 24 have opened in California. The franchisor writes to the Board identifying franchisees #21 – 24 and requests a written opinion regarding the application of tax to the same labor charge previously discussed. The franchisor refers to the letter written in January 2008 and the advice given in March 2008.

July 2008

A Board auditor replies in writing that the labor charge is not subject to tax. The auditor sends a copy of the letter to franchisees #21 - 24.

October 2008

Franchisee #21 is audited. The labor charge previously written about is examined and found to be a taxable transaction.

The auditor determines that all franchisees underreported tax because they relied on the written opinions issued in March 2008 and July 2008. Franchisees #1 - 20 are provided relief under Section 6596 beginning March 2008; franchisees #21 - 24 are provided relief beginning July 2008.

At the second interested parties meeting, interested parties commented that while they followed the logic in the above example, a common sense approach would allow all franchisees relief back to March 2008 since the Board's reply was the same in March and July. Staff believes allowing relief back to a date prior to the taxpayer (franchisee) receiving advice from the Board would be beyond the provisions of Section 6596.

**Franchisors disseminating information to their franchisees.** At the first interested parties meeting, it was noted that franchisors use many different methods to communicate with their franchisees. For example, franchisors may provide Internet bulletin boards or chat rooms as a way to share information between the franchisees. Staff would like to clarify that this type of communication would not qualify for relief under Section 6596. As previously discussed, relief under Section 6596 is limited to the incorrect information provided in writing, from the Board, in response to a written request. In order for relief to apply to franchisees, the franchisor should identify its franchisees in a written request sent to the Board. The Board will send a copy of its response to all identified franchisees, thus providing them with written advice. If that advice is later determined to be incorrect, the Board will have a record of who the incorrect advice was sent to and can send a letter correcting that advice.

**Written advice provided in a prior audit.** The term "written advice" includes written comments provided in audit working papers. Regulation 1705(a)(3) explains that written advice provided in the audit report may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Thus, written advice provided in the audit of a franchisor would only provide relief from liability for that franchisor (or a legal or statutory successor to that franchisor). Although



**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

franchisees may have similar transactions, they are not a party to the audit and are not provided relief based on reliance on the written information in the audit.

**VI. Alternative 1 - Staff Recommendation****A. Description of Alternative 1**

Staff recommends revising Regulation 1705 to clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

**B. Pros of Alternative 1**

Although Regulation 1705 currently explains how relief applies when written advice is requested by a taxpayer's representative, the proposed changes specifically explain how identified franchisees can request section 6596 relief based on written advice provided to their franchisor. Franchisor and franchisee may not realize they are covered by the current regulation unless those specific terms are included.

**C. Cons of Alternative 1**

None.

**D. Statutory or Regulatory Change for Alternative 1**

No statutory change is required. However, staff's recommendation does require the amendment of Regulation 1705.

**E. Operational Impact of Alternative 1**

Staff will notify taxpayers of the amendments to Regulation 1705 through an article in the Tax Information Bulletin (TIB).

**F. Administrative Impact of Alternative 1****1. Cost Impact**

The workload associated with publishing the regulation and TIB is considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 1**

Overall, taxpayer impact is minimal as the proposed revisions do not change the current application of tax. However, clarification in the regulation will let franchisors know that they can request written advice on behalf of their franchisees and that those identified franchisees can request relief from liability if the written information is later found to be incorrect.

**FORMAL ISSUE PAPER**

Issue Paper Number 08-008

**H. Critical Time Frames of Alternative 1**

Implementation will take place 30 days following approval of the regulation by the State Office of Administrative Law.

**VII. Alternative 2 – No Revisions**

**A. Description of Alternative 2**

Do not revise Regulation 1705.

**B. Pros of Alternative 2**

The proposed revisions do not change the current application of tax, and therefore could be viewed as unnecessary. In addition, not revising Regulation 1705 would avoid the workload involved in processing and publicizing the revisions.

**C. Cons of Alternative 2**

Although staff believes that franchisees can request section 6596 relief under the current provisions of Regulation 1705, the regulation does not expressly state that identified franchisees can request section 6596 relief based on written advice provided to their franchisor. Not revising Regulation 1705 will result in a continued lack of clarity in this area.

**D. Statutory or Regulatory Change for Alternative 2**

None.

**E. Operational Impact of Alternative 2**

None.

**F. Administrative Impact of Alternative 2**

**1. Cost Impact**

None.

**2. Revenue Impact**

None. See Revenue Estimate (Exhibit 1).

**G. Taxpayer/Customer Impact of Alternative 2**

Without clarifying language in the regulation, franchisees may not understand that they may qualify for relief under section 6596 for incorrect written information that was provided to their franchisor. In addition, franchisors may not know that they can request written advice on behalf of their franchisees.

**H. Critical Time Frames of Alternative 2**

None.

**Preparer/Reviewer Information**

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: August 27, 2008

**REVENUE ESTIMATE**

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION



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**Proposed revisions to Regulation 1705, *Relief from Liability*,  
regarding RTC section 6596 relief to franchisees based on  
written advice provided to franchisors**

**Alternative 1 – Staff Recommendation**

Staff recommends revising Regulation 1705 to clarify that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. The proposed revisions also explain that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

**Alternative 2 - Other Alternative Considered**

Do not revise Regulation 1705.

**Background, Methodology, and Assumptions**

**Alternative 1 – Staff Recommendation**

There is nothing in staff recommendation that would impact sales and use tax revenue. Staff recommendation clarifies that the provisions of the regulation apply when an identified franchisee relies on incorrect written advice provided to its franchisor. Staff recommendation further explains that in order to qualify for relief, the transactions in question must involve the same facts and circumstances as those presented in the franchisor's written request for relief.

**Alternative 2 - Other Alternative – do not revise Regulation 1705**

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Estimate

## **Revenue Summary**

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – alternative 2 does not have a revenue impact.

## **Preparation**

Mr. Bill Benson, Jr., Acting Manager, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Jeff McGuire, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at 916-445-0840.

Current as of August 27, 2008.

**Regulation 1705. RELIEF FROM LIABILITY.**

Reference: Section 6596, Revenue and Taxation Code.

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of sales and use taxes, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

- (1) Written advice given by the Board under the conditions set forth in subdivision (b) below; or
- (2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or
- (3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term "prior audit" means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term "written advice" includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term "written advice" includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.**

(1) Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

(2) A person may write to the Board and propose a use tax reporting methodology for qualified purchases subject to use tax. If the Board concludes that the reporting method reflects the person's use tax liability for the defined population, then the Board may write to the person approving the use of the reporting method. The approval shall be subject to certain conditions. The following conditions shall be included in the approval:

- (A) The defined population of the purchases that will be included in the reporting method;
- (B) The percentage of purchases of the defined population that is subject to tax;
- (C) The length of time the writing shall remain in effect;
- (D) The definition of a significant or material change that will require rescinding the approved reporting method; and
- (E) Other conditions as required.

The written approval of the use tax reporting methodology is void and shall not be relied upon for the purposes of Revenue and Taxation Code section 6596 if the taxpayer files a claim for refund for tax that had been reported based upon this reporting method.

**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit

comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS OR FRANCHISORS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation. A franchisor requesting advice on behalf of its franchisee(s) must identify and include the specific franchisee name(s) for whom the advice is requested for relief from liability under this regulation.

For an identified trade or industry member or franchisee to receive relief based on advice provided in the written communication to the trade or industry association or franchisor, the activity or transactions in question must involve the same facts and circumstances as those presented in the written inquiry by the association or franchisor.